

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

Case No. **1:21-cr-00575-JB-1**

-VS-

**JAKOB CERVANTES,**

**Defendant.**

**ORDER DENYING DEFENDANT'S EXPEDITED**  
**MOTION TO REVIEW CONDITIONS OF RELEASE**

**THIS MATTER** is before the Court on defendant Jacob Cervantes' Expedited Motion to Review Conditions of Release, filed on May 5, 2021. Doc. 18. The United States opposes the motion. Doc. 23. For the following reasons, the Court denies Mr. Cervantes' motion.

On March 29, 2021, the Court held both a preliminary hearing and a detention hearing on a criminal complaint that had been filed against Mr. Cervantes. Doc. 13. Mr. Cervantes was charged in a criminal complaint with being a prohibited person in possession of a firearm and ammunition, and he subsequently has been indicted on that charge. *See* Docs. 1, 16. At the hearing on March 29, 2021, the government both presented evidence and proffered evidence that Mr. Cervantes posed a significant danger to the community. *See* Doc. 13 (clerk's minutes). However, given Mr. Cervantes' status as a paraplegic and his representation that he needed to continue with medical care he was receiving in Albuquerque, the government did not oppose Mr. Cervantes' release to the La Pasada Halfway House. *See id.* The Court agreed with that

approach and chose to release Mr. Cervantes to the halfway house subject to conditions. *See* Doc. 14. The Court determined that these were the least restrictive conditions that would assure the safety of the community. Mr. Cervantes now seeks to be released to the same third-party custodian whom the Court rejected in March. Mr. Cervantes has not presented sufficient evidence for the Court to reconsider its prior ruling and modify the conditions of release as he proposes.

The primary basis for Mr. Cervantes' request for release to his father, Ernest Cervantes, is that he is having trouble accessing adequate medical care at La Pasada, and also is having trouble performing all his activities of daily living without the assistance of family members. *See generally* Doc. 18 at 1–2. He also suggests that he needs to have a medical procedure done, but that he has had to reschedule the procedure because he cannot obtain adequate assistance at La Pasada for follow-up care. *Id.* at 2. Mr. Cervantes, however, has not submitted any medical records to support his claims that his medical condition is deteriorating at La Pasada. *See generally* Doc. 18. Although the Court is confident that living with a family member might be easier for Mr. Cervantes given his physical limitations, the government has presented substantial evidence—both at the hearing in March and in its response to Mr. Cervantes' motion—that Mr. Cervantes' physical condition has not interfered with his ability to carry and use firearms, and possibly to sell them, and to use those weapons to intimidate and possibly injure others. *See* Doc. 23 at 1–6, 9–10. The Court therefore will not amend the conditions of release to permit Mr. Cervantes to live with his father.

The Court will clarify, however, that it does not view Mr. Cervantes' motion as seeking to reopen the detention hearing under 18 U.S.C. § 3142(f) or as seeking temporary release under 18 U.S.C. § 3142(i). *See* Doc. 23 at 7–9 (arguing that the Court should deny Mr. Cervantes'

motion because Mr. Cervantes has not presented new, material information warranting his release, nor has he presented compelling reasons for temporary release). The Court *released* Mr. Cervantes to the halfway house. *See* Doc. 14. Consequently, under 18 U.S.C. § 3142(c)(3), the Court “may at any time amend the order [of release] to impose additional or different conditions of release.” The defendant and the government each have the right to seek modification or review of any release order by filing a motion under 18 U.S.C. § 3145(a). Nonetheless, having considered Mr. Cervantes’ motion, the Court declines to amend the conditions of release as Mr. Cervantes has proposed.

**IT IS THEREFORE ORDERED** that defendant Jacob Cervantes’ Expedited Motion to Review Conditions of Release (Doc. 18) is DENIED.

DATED this 13th day of May 2021

  
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Laura Fashing  
United States Magistrate Judge